

Duane Morris

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April 27, 2008

**VIA FACSIMILE**

Hon. Alvin K. Hellerstein  
United States District Judge  
United States Courthouse  
500 Pearl Street, Room 1050  
New York, New York 10007

Re: Drew Scientific Inc. v. PointCare Technologies, Inc., 08 CV 1490

Your Honor:

We represent plaintiff in the above-captioned case and we are writing with respect to how to address our adversary's violation of your Rules regarding extensions of time. In our conference with Your Honor on February 19, 2008, you set a schedule that required the service of our papers in support of our Motion for a Preliminary Injunction on April 18, 2008 (after a short but intensive discovery schedule), Defendant's Opposition on April 25, and our Reply by noon, April 30, with a hearing scheduled for 10 a.m., May 6, 2008. The relevant portion of this transcript is attached hereto as Exhibit 1. We later agreed to move the deadline for our opening papers up to April 16, 2008, which gave us 7 days after the last deposition, and defendant 9 days beyond that.

We served our papers on the 16th, but defendant did not meet the April 25 deadline. No one ever called us about a possible extension and no one from PointCare submitted the written request required by Your Honor's Individual Rule 1(D). The first we heard about any delay was at 6:10 a.m. on April 26, when counsel advised us that he was sorry that the filing did not get done in time and that he would serve later that day. No explanation was even offered. (A copy of this e-mail is annexed hereto as Exhibit 2).

After waiting another 8 hours and receiving no papers, I wrote counsel an e-mail at 2:15 p.m. on the 26th, which is attached hereto as Exhibit 3. Counsel did not respond to my e-mail. Finally, we received the opposition papers by e-mail at 4:58 a.m. today, two days after defendant's papers were due to be served as per Your Honor's February 19 directive. Again, counsel offered no explanation for the belated Opposition, which included a 48 page

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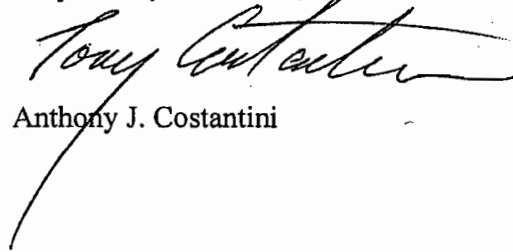
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memorandum of law and no less than five affidavits totaling 92 pages and incorporating 83 exhibits. Indeed, two of defendant's witnesses who were deposed in this lawsuit each submitted affidavits of over thirty pages in length. All of the Affidavits were sworn to on April 25 and could have been delivered on that date.

Our time to file a Reply has been unilaterally reduced to a mere three calendar days including a Sunday by the unauthorized late service of the Opposition, and it has been complicated by the unexpected raft of Affidavits (we submitted one short three-page Affidavit in our moving papers, in addition to the initial Affidavits filed by each side). Accordingly, I would ask that the Opposition be struck, but if the Court is not so inclined, then this letter constitutes my formal request under Your Honor's Individual Rules for an extension of time to file a Reply from Noon, April 30, to Noon, May 2, if that is consistent with the Court's desire to hold a hearing on May 6.

Respectfully Submitted,



Anthony J. Costantini

cc: Andrew Caplan, Esq.  
Michael Twohig, Esq.  
Howard Miller, Esq.